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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-85

DEWEY M. RUMFELT,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Seventh Circuit

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Dewey Rumfelt respectfully petitions that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit which was rendered on June 15, 1971.

OPINIONS BELOW

The District Court for the Eastern District of Illinois entered judgment of the jury verdict entered in favor of the United States of America. The United States Court

of Appeals for the Seventh Circuit affirmed in an opinion not yet reported, a copy of which may be found as an appendix to this petition.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit sought to be reviewed was rendered on June 15, 1971. No petition for rehearing was filed. The jurisdiction of this Court is invoked under the Act of June 25, 1948, Chapter 646, 62 Stat. 929, 28 U.S. C.A. 1254 (1).

QUESTION PRESENTED FOR REVIEW

Whether the Court's instruction to the jury setting forth the elements required to be proved in order to establish an offense charged in the indictment denies due process to the defendant when the elements set forth are completely alien to the crime charged in the indictment and the evidence produced at trial.

STATEMENT OF THE CASE

The pertinent facts required to support the Petitioner's Writ of Certiorari are as set out in the opinion of the United States Court of Appeals for the Seventh Circuit, as follows:

> "Alto Pass, Illinois, is a small town. Among the buildings are a small grocery store and a small bank (Farmers State Bank) which are located adjacent to each other on the main street.
>
> On February 29, 1968, witness John D. Aldrich left the grocery store about 1 P.M. intending to drive his automobile truck which had been parked in front of the store. As he neared his truck, he saw a masked man with rifle in hand standing beside an automobile

parked near the truck and in front of the bank. Aldrich testified the masked man pointed the rifle at him and said 'get in the bank.' They both walked toward the bank and Aldrich attempted to open the door but discovered it was locked. Aldrich told the masked man he could not get into the bank and the masked man who was standing a short distance behind him came up to the building and looked in the window. He then told Aldrich to get out of town, and Alrich got into his truck and left town."

The person wearing a mask then entered the 1964 Oldsmobile and left town.

The indictment was brought under Title 18 U.S.C., Sec. 2113 (a) which provides as follows:

"(a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, or any savings and loan association; or

Whoever enters or attempts to enter any bank, or any savings and loan association, or any building used in whole or in part as a bank, or as a savings and loan association, with intent to commit in such bank, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank or such savings and loan association and in violation of any statute of the United States, or any larceny . . .

Shall be fined not more than $5,000 or imprisoned not more than twenty years, or both."

The indictment brought by the grand jury and read to the jury provides as follows:

"THE GRAND JURY CHARGES:

On or about February 29, 1968, in Alto Pass, Illinois, within the Eastern District of Illinois, the defendant, DEWEY M. RUMFELT, did knowingly, wilfully and unlawfully attempt to enter the Farmers State Bank, a banking institution, the deposits of which were then insured by the Federal Deposit Insurance Corporation, with the intent to commit in said bank a felony affecting said Farmers State Bank, to wit, to take therefrom money which was in the care, custody, control, management and possession of said bank; all in violation of Section 2113(a), Title 18, United States Code."

The Court's instruction number Four given over objection by defense counsel provides as follows:

"Three essential elements are required to be proved in order to establish the offense charged in the indictment.

FIRST: The act or acts of taking or attempting to take, from the person or presence of another, money belonging to or in the care, custody, or control, management or possession of a bank, as charged;

SECOND: The act or acts of taking or attempting to take such money by force or violence, or by means of intimidation;

THIRD: Doing such acts knowingly, wilfully and unlawfully.

As stated before, the burden is always on the prosecution to prove beyond a reasonable doubt every essential element of the crime charged; the law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence."

ARGUMENT

The first paragraph of Title 18, U.S.C., Section 2113 (a) establishes a crime defined as the attempt to take a thing of value by intimidation from a person or presence of another. The second paragraph in the disjunctive establishes a crime defined as the attempt to enter a building used as a bank. The word intimidation is not used in the second paragraph.

The indictment under which the defendant was brought to trial charges the defendant with the crime of attempting to enter a bank pursuant to the second paragraph of the statute. The instruction of the Court charges the jury with the essential elements to convict as set forth under the first paragraph of the statute.

The evidence presented at trial does not show that there was an attempt by intimidation to take anything of value belonging to the bank from the presence of another. The intimidation as shown by the evidence was directed toward a stranger who happened to be on the street.

The petitioner has been denied due process by use of the court's instruction No. 4 in the following respects:

(1) The court has broadened the crime established by Congress to include the use of intimidation upon a person as an attempt to enter into a bank.

(2) The Court removed the issue of an actual attempt to enter a bank from consideration by the jury. The question of an actual attempt to enter the building is a close question in this case. The jury could well have believed that the intimidation of a stranger in the vicinity of a bank was an attempt to enter the bank.

CONCLUSION

In conclusion we believe that because the District Court so inaptly misapplied the provision of the statute, the petitioner was denied due process under the law.

Respectfully submitted

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